

BILL NO. D-73-05 - 24

GENERAL ORDINANCE NO. ~~73-05~~ D-11-73

AN ORDINANCE repealing Special Ordinance No. S-242 approved March 25, 1958, by the Common Council of the City of Fort Wayne, Indiana, which ordinance ratified and approved a certain contract and agreement made and entered into by and between the City of Fort Wayne, Indiana, by and through its Board of Public Works, and S.F. Bowser and Company, Inc. of the City of Fort Wayne, Indiana.

WHEREAS, on the 4th day of March, 1958, the City of Fort Wayne, Indiana, by and through its Board of Public Works, made and entered into a certain contract and agreement with S.F. Bowser & Company, Inc. of the City of Fort Wayne, Indiana, for the granting of a franchise to construct, maintain and operate a side track, connecting the main tracks of the Pittsburgh, Fort Wayne, and Chicago Railroad (now known as the Pennsylvania Railroad Company) up with the plant of the said S.F. Bowser & Company, Inc., for a period of twenty-five years from the 4th day of March, 1958; and

WHEREAS, the Successor in interest to said S.F. Bowser & Co., Inc., with regard to the rights granted under said agreement and ordinance is the McMillen Foundation, Inc. an Indiana Not for Profit corporation; and

WHEREAS, it is no longer necessary for the parties and their successors to the franchise agreement to make further use of the rights granted thereunder; and

WHEREAS, all parties in interest to said franchise agreement have released all outstanding rights therein, as evidenced by the Release attached hereto, marked Exhibit "A" and by this reference incorporated herein; and

WHEREAS, all parties in interest to said franchise agreement desire that said franchise agreement be forever terminated and released.

NOW THEREFORE, be it ordained by the Common Council of the City of Fort Wayne, Indiana:

SECTION 1. That the Special Ordinance No. S-242, approved by the Common Council of the City of Fort Wayne, Indiana on March 25, 1958, which ordinance ratified and approved a certain contract and agreement made and entered into by and between the City of Fort Wayne, Indiana, by and through its Board of Public Works, and S.F. Bowser & Company, Inc. of the City of Fort Wayne, Indiana, is hereby repealed.

SECTION 2. That this ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


Councilman

Approved as to form and legality



Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by Nuckols, seconded by V. Schmidt, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES <u>9</u>	NAYS <u>0</u>	ABSTAINED _____	ABSENT _____ to-wit:
BURNS	<u>✓</u>	_____	_____	_____
HINGA	<u>✓</u>	_____	_____	_____
KRAUS	<u>✓</u>	_____	_____	_____
MOSES	<u>✓</u>	_____	_____	_____
NUCKOLS	<u>✓</u>	_____	_____	_____
SCHMIDT, D.	<u>✓</u>	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____

DATE: 5/22/73

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (General) (~~Annexation~~) (~~Special~~) (Appropriation) Ordinance (Resolution) No. D-11-73 on the 22nd day of May, 1973.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

W. Sanford C. W. Jr.
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of May, 1973, at the hour of 4:00 o'clock A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 24th day of May, 1973, at the hour of 4:00 o'clock P. M., E.S.T.

John A. Edwards
MAYOR

SUSPENSION OF RULES

BILL NO. B-73-05-24

Councilman John Nuckols, moved to suspend the rules on passage of BILL NO. B-73-05-24, at this meeting of May 22, 1973, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman Salvino, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and General ORDINANCE was accordingly placed on its passage.

DATE: 5-22-73

	PRESIDING OFFICER	CITY CLERK			
	<u>9</u>	<u>0</u>			
	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT</u>
<u>BURNS</u>	<u>✓</u>				
<u>HINGA</u>	<u>✓</u>				
<u>KRAUS</u>	<u>✓</u>				
<u>NUCKOLS</u>	<u>✓</u>				
<u>MOSES</u>	<u>✓</u>				
<u>D. SCHMIDT</u>	<u>✓</u>				
<u>V. SCHMIDT</u>	<u>✓</u>				
<u>STIER</u>	<u>✓</u>				
<u>TALARICO</u>	<u>✓</u>				

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance Amended 5-11-73

ATTEST: (SEAL)

DATE: 5/22/73

Shirley M. Webster
CITY CLERK

Bill No. G- 73-05-24

REPORT OF THE COMMITTEE ON REGULATIONS

We, your Committee on Regulations to whom was referred an Ordinance
repealing Special Ordinance No. S-242 approved March 25, 1958,
by the Common Council of the City of Fort Wayne, Indiana,
which ordinance ratified and approved a certain contract and
agreement made and entered into by and between the City of
Fort Wayne, Indiana, by and through its Board of Public Works,
and S. F. Bowser and Company, Inc. of the City of Fort Wayne,
Indiana.

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance also PASS.

John Nuckols - Chairman

Vivian G. Schmidt = Vice-Chairman

William T. Hinga

Paul M. Burns

Donald J. Schmidt

DATE 5-22-73 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

RELEASE OF RIGHTS IN AND TO A
RAILROAD SIDE TRACK FRANCHISE

THIS AGREEMENT, Made and entered into this 22 day of May,
1972, by and between the CITY OF FORT WAYNE, in the State of Indiana, hereinafter called "City", and MC MILLEN FOUNDATION, INC., a not for profit corporation, duly incorporated under the laws of the State of Indiana, hereinafter called "The Foundation".

WITNESSETH:

WHEREAS, there is in existence a certain Agreement concerning a side track railroad franchise, dated the 4th day of March, 1958, by and between BOWSER, INC., an Indiana corporation, and the City, which said Agreement of March 4, 1958, is a renewal of one certain Side Track Franchise Agreement executed and effective as of March 30, 1933, by and between Bowser, Inc. and the City, and

WHEREAS, the above recited Agreement of 1933 constituted a consolidation of original Side Track Franchise Agreements between Bowser, Inc. and the City which were executed and effective as of March 24, 1908, and June 14, 1910, respectively, and evidenced by certain general City Ordinances numbered 354 and 440, respectively, all as recited in the Agreement of March 4, 1958, above referred to between Bowser, Inc. and the City, and

WHEREAS, all of the above recited Side Track Franchise Agreements touch and concern real estate conveyed by Bowser, Inc., an Indiana corporation,

with its principal office in the City of Chicago, Cook County, Illinois, to Growth Industries, Inc. by that certain Warranty Deed from Bowser, Inc. to Growth Industries, Inc. dated April 24, 1962, and recorded as Document No. 22396 in Book No. 601, pages 578 through 581 inclusively, along with the Bowser, Inc.'s assignment of all of Bowser, Inc.'s rights under the above recited Franchise Agreement dated March 4, 1958, and as evidenced by General Ordinance No. S-242 which represents an extension of the above referred Ordinances Nos. 354 and 440 of the City, and

WHEREAS, Growth Industries, Inc. was dissolved into The Foundation as evidenced by those Articles of Dissolution approved and filed with the Secretary of State of Indiana on May 28, 1968, and recorded on May 29, 1968 as Document No. 10080 in Book No. 320 at page 305 through page 312 inclusively, and

WHEREAS, The Foundation is presently the owner in fee simple of all real estate presently replatted as Lots 11A and 12A, duly recorded in Plat Book 31, page 90 and labeled as the Hanna-Creighton Subdivision in the Office of the Allen County Recorder, in the State of Indiana; and The Foundation desires to evidence the following covenants to the City.

NOW, THEREFORE, in consideration of the recitations hereinabove, it is hereby expressly stated and agreed:

That The Foundation hereby releases all of its past, present and future legal and equitable rights whatsoever, easements, franchises to construct, maintain and operate a side track connecting the main tracks of the Pittsburgh,

Fort Wayne and Chicago Railroad (now known as the Penn Central Railroad Company) to tracks serving any and all buildings and real estate located between Oliver Street on the West, Bowser Street on the East, and between Creighton Avenue on the North and Emily Street on the South in the City of Fort Wayne, County of Allen, State of Indiana; furthermore, and not in limitation of the foregoing, this Release pertains to said Side Track Franchise in each and every facet that said Franchise effects, touches or concerns the real estate owned by The Foundation as previously recited in these presents.

Furthermore, for value received, by reason of its equitable interest arising from and out of that certain Contract for Conditional Sale of Real Estate entered into on the 28th day of May, 1964, Wayne Warehousing and Cartage, Inc., an Indiana corporation, does by its signature below evidence its release forever of any and all rights in and to said Franchise as conveyed in said Contract for Conditional Sale of Real Estate.

ATTEST:

MC MILLEN FOUNDATION, INC.

Ass't. Dee W. Lucien Jr.
Secretary

By: Harold W. McMillen
President

ATTEST:

CITY OF FORT WAYNE

Charles W. Hutchinson

By: Earl A. Hendon
Title: MAYOR

ATTEST:

WAYNE WAREHOUSING AND
CARTAGE, INC.

P. S. Alber
Secretary

By: W. R. King
President

REQUEST FOR ACTION

To: ~~City Attorney David B. Keller~~
~~City Clerk~~ Charles Westerman
~~Associate City Attorney~~

From: (Name, Title & Department) Anthony M. Caruso, Executive
Director, Redevelopment Commission

Approved by *Anthony M. Caruso*
(Person authorized to forward legal work)
Anthony M. Caruso, Executive Director

Date: May 17, 1973

Subject: General Ordinance
(File subject designation)

File # Assigned by Records Librarian

Date: May 17, 1973

Action Requested: It is requested that a General Ordinance be
prepared repealing Special Ordinance No. S-242 approved March
25, 1958 by the Common Council of the City of Fort Wayne, Indiana,
which Ordinance ratified and approved a certain contract and
agreement made and entered into by and between the City of
(Continue on reverse side, if necessary)

cc: ~~City Attorney David B. Keller~~
~~(If request originally sent to an Associate City Attorney)~~
Mayor Ivan A. Lebamoff
Department Head of Requesting Party

DIGEST SHEET

TITLE OF ORDINANCE (See Action Requested) B-73-05-24

DEPARTMENT REQUESTING ORDINANCE Department of Redevelopment

SYNOPSIS OF ORDINANCE The original Ordinance granted a franchise to construct, operate, and maintain a side track connecting the main tracks of the Pittsburgh, Fort Wayne, and Chicago Railroad.

The franchise is no longer necessary and in order to clear title to the area, an Ordinance repealing the Special Ordinance is required.

EFFECT OF PASSAGE Legal action to this effect is necessary to close out the Hanna-Creighton Renewal Project on May 22, 1973 as scheduled.

EFFECT OF NON-PASSAGE Hanna-Creighton Renewal Project cannot close out on schedule thereby causing additional costs.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) \$229,000 if project not closed out on schedule

ASSIGNED TO COMMITTEE (J.N.) Pay - wcl